

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**E&F CUSTOM PUMPING INC.,  
Carroll County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2009-AFO-17

TO: Alan Friedman  
E&F Custom Pumping Inc.  
33215 Jade Avenue  
Templeton, Iowa 51463

Joe Halbur, Registered Agent  
E&F Custom Pumping Inc.  
621 N. Clark Street  
Carroll, Iowa 51401

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and E&F Custom Pumping Inc. (E&F Custom Pumping) for the purpose of resolving violations of the manure application separation distance requirements. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Ryan Young, Field Office 4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Phone: 712/243-1934

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. E&F Custom Pumping is a certified commercial manure service doing business in the state of Iowa.

2. On December 8, 2008, DNR Field Office 4 received a complaint regarding manure application to a farm field located in Section 30, Stockholm Township, Crawford County, Iowa. The complaint stated that manure was coming from the Denco Finisher facility and was being applied near the complainant's well.

3. On December 15, 2008, Dan Olson, DNR Field Office 4 environmental specialist senior, and Ryan Young, DNR Field Office 4 environmental specialist, investigated the complaint. Mr. Olson and Mr. Young observed that manure had been surface applied to a corn field on the west side of 290<sup>th</sup> Street. They measured the distance from the edge of the manure application to the well. The distance was 189 feet. The distance from the edge of the manure application to a nearby water source (a tributary of Otter Creek) was approximately 88 feet. The distance from the edge of the manure application to a nearby residence was approximately 312 feet.

4. On January 8, 2009, Mr. Young spoke to Dwain Bankson, a representative of Denco Finisher. Mr. Bankson stated that E&F Custom Pumping was hired for the manure application. Mr. Young observed the manure application records for the field in question. The manure was surface applied in the field at 3,000 gallons/acre. An applicator's note on the records stated that E&F Custom Pumping tried to stay 1,000 feet from the residence. Mr. Young also obtained the protocol that had been given to E&F Custom Pumping by Mr. Bankson prior to the application. The protocol included the following: 1) the applicator must locate all risk areas, including wells and streams, and maintain a 200 foot separation distance between the application and the risk areas; 2) the applicator must maintain a 750 foot separation distance between the application and any residence; and 3) the applicator must maintain a 200 foot separation distance between the application and a designated area. The protocol also included a copy of the DNR's regulations regarding the separation distances.

5. On January 9, 2009, Mr. Young spoke to Alan Friedman with E&F Custom Pumping. Mr. Friedman stated that he had instructed his employees to not apply near the stream or the residence. He stated that he had marked the areas where the manure was to be applied.

6. On January 29, 2009, DNR issued a Notice of Violation letter to E&F Custom Pumping detailing the separation distance violations. The letter informed E&F Custom Pumping that the matter was being referred for further enforcement.

7. E&F Custom Pumping has been issued previous Notice of Violation letters and a previous administrative consent order for similar violations as those cited in this

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administrative consent order. In June 2004, E&F Custom Pumping was issued a Notice of Violation letter for land applying manure too close to a residence as well as water quality violations from the land application of the manure. The manure application took place in December 2003 and following the Notice of Violation, an administrative consent order was issued in 2007 for the December 2003 violations. The administrative consent order included an administrative penalty of \$4,500.00. In April 2005, E&F Custom Pumping was issued a Notice of Violation letter for land applying manure too close to a well and for over application of manure. This manure application took place in March 2005.

**IV. CONCLUSIONS OF LAW**

1. 567 IAC 65.3(3) states for liquid manure from a confinement feeding operation, the required separation distance from a residence not owned by the titleholder of the land, a business, a church, a school, or a public use area is 750 feet. On December 15, 2008, DNR Field Office 4 noted that E&F Custom Pumping had land applied manure from a confinement feeding operation within 750 feet of a residence. The above-mentioned facts indicate a violation of this provision.

2. 567 IAC 65.3(3) further states that a person shall not apply manure on land within 200 feet from a designated area unless incorporated on the same day of application. Designated area is defined as a known sinkhole, an abandoned well, an unplugged agricultural drainage well, an agricultural drainage well surface tile inlet, a drinking water well, a designated wetland, lake or water source. Water source is defined as a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow. On December 15, 2008, DNR Field Office 4 noted that E&F Custom Pumping had land applied manure from a confinement feeding operation within 200 feet of a drinking water well as well as a water source. The above-mentioned facts indicate two violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders and E&F Custom Pumping agrees to do the following:

1. E&F Custom Pumping shall comply with all separation distance requirements when land applying manure; and
2. E&F Custom Pumping shall pay an administrative penalty of \$4,000.00, within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up

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to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit – Any economic benefit obtained by E&F Custom Pumping from the violations cited in this administrative consent order is minimal; therefore, no economic benefit is being assessed.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Failure to comply with the required separation distances threatens the animal feeding operation program because compliance with the manure application separation distances is required of all applicators. Failure to comply with the separation distances can lead to elevated levels of nitrates, ammonia, phosphorus, organic matter, fecal bacteria, e-coli, and other microorganisms in both ground water and surface water. Therefore, \$2,000.00 is assessed for this factor.

Culpability – E&F Custom Pumping has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. E&F Custom Pumping was given the separation distances as well as the DNR regulations by Mr. Bankson prior to the application. Additionally, E&F Custom Pumping has been issued two previous Notice of Violation letters and a previous administrative consent order for similar separation distance violations as those stated in this administrative consent order. Therefore, \$2,000.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

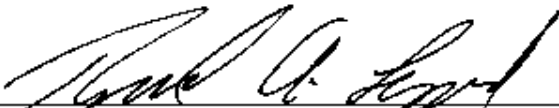
This administrative consent order is entered into knowingly and with the consent of E&F Custom Pumping. For that reason E&F Custom Pumping waives the right to appeal this administrative consent order or any part thereof.

## VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative

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consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 11 day of  
May, 2009.

  
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E&F CUSTOM PUMPING INC. *by*  
*Alan Friedman, President*

Dated this 6<sup>th</sup> day of  
May, 2009.

No facility ID#; Kelli Book, Field Office 4, EPA, VIII.D.2.b